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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ALLEN BURNETT,

Defendant and Appellant.

C042540

(Super. Ct. Nos.
01F07196, 01F07701)

Defendant Christopher Allen Burnett entered into a negotiated plea of no contest to first degree residential burglary (Pen. Code, § 459) in case No. 01F07196, to lewd or lascivious acts upon a child under the age of 14 by use of force (Pen. Code, § 288, subd. (b)(1)) in case No. 01F07196, and to driving under the influence of alcohol and causing injury (Veh. Code, § 23153, subd. (b)) in case No. 01F07701. Defendant entered his plea with the understanding that he would receive no more than 15 years in state prison and expressly waived the one-

third term limitation set forth in section 1170.1.¹ In exchange for his plea, the remaining charges and enhancements were dismissed.

The trial court sentenced defendant to an aggregate term of 15 years in state prison, comprised of the middle term of four years for the burglary, the upper term of eight years for the lewd acts, and the upper term of three years for driving under the influence, each being a full and consecutive term. He was given credit for 348 days of actual custody and 52 days of conduct credit (§ 2933.1), for a total of 400 days of credit in case No. 01F07196. The trial court imposed restitution fines of \$2,400 in case No. 01F07196 and \$200 in case No. 01F07701 (§ 1202.4) and stayed additional restitution fines in the same amounts pending successful completion of parole (§ 1202.45). The trial court imposed a \$10 crime prevention fine (§ 1202.5) and awarded victim restitution in an amount to be determined. Defendant was ordered to submit samples pursuant to section 296 and to register as a sex offender pursuant to section 290.

Defendant appeals. His request for a certificate of probable cause (§ 1237.5) was granted.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v.*

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Wende (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant. However, we have discovered a sentencing error and several errors in the preparation of the amended abstract of judgment.

The trial court failed to impose a fine pursuant to Penal Code section 290.3, which requires the imposition of a \$200 fine upon a first conviction of an offense specified in Penal Code section 290 or a \$300 fine for a second conviction and each subsequent conviction. The fine pursuant to section 290.3 is mandatory, as are penalty assessments pursuant to Penal Code section 1464 and Government Code section 76000; therefore, the trial court's failure to impose the fine and penalty assessments is an unauthorized sentence. (*People v. Terrell* (1999) 69 Cal.App.4th 1246, 1256-1257; *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1520-1522; *People v. Sierra* (1995) 37 Cal.App.4th 1690, 1694-1696.)

An unauthorized sentence may be corrected at any time whether or not there was an objection below. (*People v. Smith* (2001) 24 Cal.4th 849, 854.) In the interest of judicial economy, we modify the judgment without requesting supplemental briefing. A party claiming to be aggrieved by this procedure may petition for rehearing. (Gov. Code, § 68081.)

We also note that the amended abstract of judgment erroneously reflects that defendant was convicted in case No. 01F07701 under Vehicle Code section 23152, subdivision (b). Defendant, however, was charged with and pleaded no contest to violation of Vehicle Code section 23153, subdivision (b). The abstract must be amended to reflect defendant's conviction under the proper section.

The amended abstract of judgment also fails to reflect that the trial court ordered defendant to register as a sex offender pursuant to section 290. We will order the abstract corrected to reflect the oral pronouncement of the court. (See *People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1331-1332 [correcting abstract to reflect mandatory laboratory fee orally imposed]; *People v. Hong* (1998) 64 Cal.App.4th 1071, 1074-1084 [correcting abstract to reflect restitution fine and mandatory DNA testing orally imposed]; *People v. Goodwin* (1997) 59 Cal.App.4th 1084, 1094, fn. 8 [correcting abstract to reflect restitution fine orally imposed].)

Finally, the box for section 2933.1 should have been checked on the amended abstract of judgment to show that defendant's presentence conduct credits were calculated at a maximum of 15 percent of actual custody. Defendant was convicted of section 288, subdivision (b)(1), a "violent felony" (§ 667.5, subd. (c)(6)), triggering the 15 percent limit of section 2933.1, subdivisions (a) (prison work time credit) and (c) (presentence conduct credit). The court properly calculated presentence conduct credits at 15 percent. The amended abstract

of judgment must also reflect the statute applying to defendant's credits.

DISPOSITION

The judgment is modified to impose a sex offender fine of \$200 (Pen. Code, § 290.3) plus a \$200 state penalty assessment (Pen. Code, § 1464) and a \$140 county penalty assessment (Gov. Code, § 76000). The trial court is directed to prepare an amended abstract of judgment reflecting the imposition of the sex offender fine and penalty assessments; referencing conviction under Vehicle Code section 23153, subdivision (b); showing that defendant was ordered to register as a sex offender pursuant to Penal Code section 290; and checking the Penal Code section 2933.1 box. The trial court shall forward a certified copy of the amended abstract to the Department of Corrections. As modified, the judgment is affirmed.

RAYE, J.

We concur:

BLEASE, Acting P.J.

MORRISON, J.